

Message Text

SECRET

PAGE 01 SANTIA 02905 190037Z
ACTION SS-25

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FM AMEMBASSY SANTIAGO
TO SECSTATE WASHDC IMMEDIATE 8927

S E C R E T SANTIAGO 2905

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EXDIS

FOR ARA D AND L ONLY; FOR PROPPER FROM LANDAU

E.O. 11652: GDS
TAGS: PGOV, SHUM, CI
SUBJECT: LETELIER/MOFFITT ASSASSINATION INVESTIGATION

REF: STATE 97676

1. ALFREDO ETCHEBERRY'S ANSWERS TO QUESTIONS POSED IN
REFTEL REGARDING THE BUSTAMANTE CODE ARE AS FOLLOWS:

QUOTE:

(A) THE BUSTAMANTE CODE IS A CONVICTION OR TREATY
OF INTERNATIONAL PRIVATE LAW (CONFLICT OF LAWS) APPROVED
AT THE SIXTH INTERNATIONAL CONFERENCE OF AMERICAN STATES
IN HAVANA IN 1928. THE CONVENTION WAS SIGNED BY ALL
AMERICAN STATES WITH THE EXCEPTION OF THE U.S. AND HAS
BEEN RATIFIED BY 15 COUNTRIES INCLUDING CHILE. BECAUSE
THE UNITED STATES DID NOT SIGN THE BUSTAMANTE CODE IT
DOES NOT HAVE OBLIGATORY FORCE BETWEEN CHILE AND
THE U.S. THE BUSTAMANTE CODE WAS RATIFIED BY THE GOVERN-
MENT OF CHILE WITH THE RESERVATION THAT ANY ACTUAL OR
FUTURE INTERNAL LAWS OF CHILE WOULD TAKE PRECEDENCE

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OVER THE CODE. INTERNATIONAL TREATIES ARE CONSIDERED
LEGISLATION FOR THIS PURPOSE. THUS THE PROVISIONS OF
INTERNATIONAL TREATIES TAKE PRECEDENCE OVER THE BUSTAMANTE
CODE. THERE IS A TREATY OF EXTRADITION IN FORCE BETWEEN
CHILE AND THE U.S. ANY DISCREPANCIES BETWEEN THAT TREATY
AND THE BUSTAMANTE CODE WOULD BE RESOLVED IN FAVOR OF THE
FORMER IN CASES OF EXTRADITION BETWEEN CHILE AND THE U.S.

THE PRACTICE OF CHILEAN COURTS HAS BEEN TO APPLY THE DISPOSITION OF THE BUSTAMANTE CODE EVEN WITH RESPECT TO COUNTRIES THAT HAVE NOT SUBSCRIBED TO IT WHEN THERE IS NO TREATY BETWEEN CHILE AND SUCH COUNTRIES OR, EVEN THOUGH SUCH TREATY MAY EXIST, IT DOES NOT COVER A PARTICULAR POINT. IN SUCH CASES THE BUSTAMANTE CODE HAS BEEN APPLIED, PROVIDING IT IS NOT CONTRARY TO PROVISIONS OF A TREATY.

(B) THE EXTRADITION TREATY IN FORCE BETWEEN CHILE AND THE US DOES NOT CONTAIN ANY PROVISION RELATIVE TO MILITARY LAW OR JURISDICTION. NEVERTHELESS, ARTICLE V SAYS: 'NEITHER OF THE CONTRACTING PARTIES SHALL BE BOUND TO DELIVER UP ITS OWN CITIZENS OR SUBJECTS UNDER THE STIPULATIONS OF THIS TREATY.' AND ARTICLE VI ADDS:

' A GUGITIVE CRIMINAL SHALL NOT BE SURRENDERED IF THE OFFENSE IN RESPECT OF WHICH HIS SURRENDER IS DEMANDED BE OF A POLITICAL CHARACTER, OR IF HE PROVES THAT THE REQUISITION FOR HIS SURRENDER HAS, IN FACT, BEEN MADE WITH A VIEW TO TRY OR PUNISH HIM FOR AN OFFENSE OF A POLITICAL CHARACTER.

NO PERSON SURRENDERED BY EITHER OF THE HIGH CONTRACTING PARTIES TO THE OTHER SHALL BE TRIABLE OR TRIED, OR BE PUNISHED, FOR ANY POLITICAL CRIME OR OFFENSE, OR FOR ANY ACT CONNECTED THEREWITH, COMMITTED PREVIOUSLY TO
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HIS EXTRADITION.

IF ANY QUESTION SHALL ARISE AS TO WHETHER A CASE COMES WITHIN THE PROVISIONS OF THIS ARTICLE, THE DECISION OF THE AUTHORITIES OF THE GOVERNMENT ON WHICH THE DEMAND FOR SURRENDER IS MADE, OR WHICH MAY HAVE GRANTED THE EXTRADITION SHALL BE FINAL.'

FOR THEIR PART, THE PRINCIPAL PROVISIONS OF THE BUSTAMANTE CODE ON THIS MATTER ARE THE FOLLOWING: ARTICLE 345: 'THE CONTRACTING STATES ARE NOT OBLIGED TO DELIVER THEIR OWN NATIONALS. THE COUNTRY THAT REFUSES TO DELIVER ONE OF ITS OWN CITIZENS WILL BE OBLIGED TO TRY HIM.'

ARTICLE 352: 'EXTRADITION COVERS THOSE CHARGED OR CONVICTED AS PERPETRATORS, ACCOMPLICES OR CONCEALERS ("ENCUBRIDORES") OF CRIMES'; ARTICLE 355: 'POLITICAL AND POLITICALLY RELATED CRIMES, AS DETERMINED BY THE REQUESTED STATE, ARE NOT EXTRIDITABLE'; ARTICLE 356: 'NOR WILL EXTRADITION BE ACCORDED IF THE REQUESTED STATE DECIDES IT HAS BEEN PROVEN THAT THE EXTRADITION PETITION STEMS DE FACTO FROM THE OBJECTIVE OF TRYING OR PUNISHING THE ACCUSED FOR A CRIME POLITICAL IN NATURE'; ARTICLE 357: 'THE MURDER OR ASSASSINATION OF THE CHIEF OF A CONTRACTING

STATE OR ANY PERSON EXERCISING THE AUTHORITY OF SUCH STATE WILL NOT BE CONSIDERED A POLITICAL CRIME.' THE BUSTAMANTE CODE DOES NOT CONTAIN ANY PROVISIONS RELATING TO MILITARY CRIMES OR TO CRIMES COMMITTED BY MILITARY PERSONS.

(C) IN SUMMARY:

-- THE BILATERAL TREATY OF EXTRADITION BETWEEN CHILE AND THE US TAKES PRECEDENCE OVER THE BUSTAMANTE CODE.

--BOTH THE EXTRADITION TREATY AND THE BUSTAMANTE CODE ESTABLISH THAT NEITHER COUNTRY IS OBLIGED TO TURN OVER ITS OWN NATIONALS TO THE OTHER. THE BUSTAMANTE SECRET

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CODE REQUIRES THE STATE REJECTING AN EXTRADITION REQUEST ON GROUNDS OF NATIONALITY TO TRY THAT PERSON IN ITS OWN COURTS. THE EXTRADITION TREATY DOES NOT CONTAIN THIS OBLIGATION.

--NEITHER THE TREATY NOR THE BUSTAMANTE CODE CONTAIN ANY PROVISIONS RELATING TO MILITARY CRIMES, OR CRIMES COMMITTED BY MILITARY PERSONS, OR TO MILITARY LAW.

--BOTH THE TREATY AND THE BUSTAMANTE CODE CONTAIN SPECIFIC PROVISIONS AGAINST EXTRADITION FOR POLITICAL CRIMES, WHICH ARE DEFINED BY THE STATE RECEIVING THE EXTRADITION REQUEST.
END QUOTE

2. ETCHEBERRY IS OUT OF TOWN FOR NEXT FOUR DAYS, BUT CAN BE REACHED IF ANY FURTHER LEGAL ADVICE REQUIRED.
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